

ORIGINAL

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In Re: 05-44481 (RDD)

DELPHI CORPORATION, et al., One Bowling Green
New York, New York
Debtors. April 30, 2008
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TRANSCRIPT OF MOTIONS
BEFORE THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Appearances continued on next page)

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1 THE COURT: Please be seated. Okay. Delphi
2 Corporation.

3 MR. BUTLER: Your Honor, good morning. Jack Butler,
4 Kayalyn Marafioti and Tom Matz from Skadden, Arps here on behalf of
5 Delphi Corporation for our thirtieth omnibus hearing.

6 Your Honor, we have filed an agenda with ten items on
7 the agenda for today and we propose to proceed in the order of the
8 agenda.

9 THE COURT: Okay. That's fine.

10 MR. BUTLER: Your Honor, the first matter on the agenda,
11 matter No. 1, is the Steering Sale motion objections, the follow on
12 objections to the Steering Sale at docket No. 11390.

13 As Your Honor may recall, we received a total of 44
14 objections to the sale hearing, nine of those were resolved prior
15 to the sale hearing, 28 of those were resolved prior to the
16 subsequent hearing on March 19th that had been scheduled to
17 consider them. That left us with seven objections that we had to
18 deal with; five objections that had been adjourned to the April 2nd
19 claims hearing and two objections that were adjourned to this
20 hearing. Of those seven objections, three have now been resolved,
21 that is the Hydro Aluminum North America, Inc. objection at docket
22 No. 12452. There's a stipulation and agreed order at docket No.
23 13291. The Dupont objection at docket No. 12464 which has now had
24 an entered stipulation and agreed order at docket No. 13405 and an
25 objection filed by Frudenberg, Nolk, a general partnership, on

1 behalf of the various entities at docket No. 12479 and that
2 objection was withdrawn at docket No. 13282. That leaves us now
3 with four remaining objections; two of those were adjourned to the
4 April 2nd claims hearing and Your Honor adjourned those already to
5 the May 8th hearing and then two others; one filed by -- both filed
6 actually by American Aikoku Alpha, Inc. at docket No. 12369 and
7 12376 remains for this hearing.

8 Your Honor, American Aikoku has a motion pending at the
9 May 8th claims hearing relating to its claims and to allow for a
10 settlement to resolve all of its outstanding issues which would
11 resolve these two objections, among others, if in fact that motion
12 is granted. As a result, Your Honor, we'd like to adjourn these
13 two objections to the May 2nd hearing. We'll take up the four
14 remaining Steering Sale objections at the May 8th claims hearing if
15 that's acceptable, Your Honor.

16 THE COURT: All right. That's fine.

17 These are -- even though you're saying they're
18 objections to the Steering Sale, they're either a cure or
19 assumption or an assignment objection?

20 MR. BUTLER: Yes, Your Honor.

21 THE COURT: Okay. All right. So I'll deal with that in
22 May.

23 MR. BUTLER: Thank you, Your Honor.

24 Your Honor, similarly, item No. 2 on the agenda which is
25 the Omitted Contracts Assumption Procedures motion, filed at docket

1 No. 13029, was filed because Delphi identified additional contracts
2 that needed to be noticed out. There was an Omitted Contracts
3 Assumption Procedures order entered by the Court on March 25th at
4 docket No. 13232 and pursuant to that we sent notices of
5 assumption, assignment and cure with respect to 150 additional
6 contracts. We've received six objections out of the 150 and of
7 those six objections one has been withdrawn, four are settled and
8 are being based on various stipulations, some of them that are
9 being drafted right now, and the final one with Federal Screw Works
10 at docket No. 13356 remains open and we're negotiating with them.

11 We'd like Your Honor to adjourn all six of these
12 objections and just for the record they're docket Nos. 13343,
13 13344, 13356, 13358, 13364 and 13373. Those six objections we'd
14 like to adjourn to the May 8th claims hearing so we can complete
15 the resolution of these objections in a consensual manner. We
16 would expect, Your Honor, that the vast majority of the paperwork
17 will be done on all of these by that time.

18 THE COURT: Okay. That's fine.

19 MR. BUTLER: Thank you, Your Honor.

20 Your Honor, the balance of the matters on the docket
21 today are all either procedural motions or substantive motions that
22 are designed to continue to stabilize and protect the business as
23 we move forward in evaluating modifications to our plan of
24 reorganization and otherwise considering actions to take with
25 respect to the closing that was commenced but not completed on

1 April 4th. We have been in very close consultation with our
2 statutory committees on all of these matters and I'm pleased that
3 we have the committees' support on matters we're presenting to you
4 today and I'll walk through each of them with the Court.

5 The first at item No. 3 is the Fifth 365(d)(4) Extension
6 motion, which under the prior orders of the Court at docket No.
7 12878, the time to assume or reject leases would have expired on
8 the early or the effective date of the plan or May 31, 2008. We
9 filed a request for an extension that would essentially extend out
10 the deadline now to the effective date of the plan that's already
11 been confirmed or the effective date of any modified plan subject
12 to the terms of such plan and corresponding confirmation order
13 including any elections to assume or reject real property leases
14 that might be permitted thereunder. This relief impacts
15 approximately eighty real property leases. As Your Honor may
16 recall, under the plan and disclosure statement that is currently
17 extant the company assumed all of those leases. There were no
18 leases under plan Exhibit 8-1-A that were set for rejection. While
19 obviously the company in connection with any modifications would
20 have the right to consider modifications, the company has no
21 present intention of doing so.

22 No lessor filed an objection to the relief requested, no
23 party has filed an objection to the relief requested, Your Honor,
24 and we'd ask Your Honor to enter the order that's been proposed.

25 THE COURT: Okay. I have no problem with an extension

1 and obviously the lessors didn't either. My review of the proposed
2 exclusivity order, though, prompted me to look at this a little
3 more carefully notwithstanding that it was consensual and let me
4 just raise with you an issue that, I think, may require a slight
5 change to the order given -- again, the order is intended to
6 protect assets of the debtors -- protect against the automatic
7 rejection of leases and the exclusivity order as proposed at least
8 contemplates the possibility of someone other than the debtors
9 filing a plan. Those issues are reserved, obviously, for the
10 future and I expect that everyone will continue to try and work
11 together to have a consensual modification of the plan but it's
12 conceivable that someone other than the debtor could propose a plan
13 and get one confirmed and as I read 1127 if this is limited just to
14 the plan or any modified plan, I think it's just limited to the
15 proponent of the plan which would be the debtors so you would run a
16 risk, however remote, that if someone else got a plan confirmed
17 these leases would be deemed rejected.

18 So I took out the phrase, "modified plan," and just
19 said, "any other Chapter 11 plan" and that would protect the
20 estates and I think it's consistent with what you noticed out to
21 everyone who, I'm sure, assumed that this issue would be put off
22 until confirmation unless they have their right to come in and seek
23 a shortened period.

24 MR. BUTLER: Certainly, Your Honor, I understand the
25 Court's modification of the proposed order, you know, and we have

1 in our discussions with our committees, you know, deferred to
2 another day the ultimate discussion about what rights the parties
3 have with respect to modification of the plan.

4 THE COURT: No, I appreciate that. This is just to be
5 protective as opposed to in any way accelerate that discussion.

6 MR. BUTLER: Right. And I presume the changes are being
7 made, Your Honor, with the full reservation of rights to all the
8 parties to argue that on the other issues.

9 THE COURT: Sure. Yes. Absolutely. No, this is just -
10 - it comes up in connection with the 4(m) motion, too, but with
11 that change which I, again, believe is fully consistent with what
12 you noticed out because I think the lessors, I'm sure, didn't take
13 the time to read 1127 and go through that analysis, they just
14 assumed that this would probably be put off until confirmation of
15 some plan or the effective date of some plan and they obviously
16 have their right to come in for cause if they want to.

17 Okay. So with that change I'll approve it.

18 MR. BUTLER: Thank you, Your Honor.

19 Your Honor, speaking of exclusivity, that actually is
20 the next motion, item No. 4 on the agenda, the motion to further
21 extend exclusivity at docket No. 13360.

22 As Your Honor may recall, our current exclusivity order
23 which was obtained on a precautionary basis at the time because it
24 was post-confirmation provided that we would have the exclusive
25 right to file a plan through and including May 31, 2008 and to

1 solicit acceptances of the plan through and including July 31,
2 2008.

3 We've had informal discussions with both representatives
4 of the plan investors and representatives of the statutory
5 committees with respect to the motion. There were no objections
6 filed with respect to the motion by any party. Let me just recap
7 the discussions we've had. With respect to the discussion we had
8 with White & Case on behalf of ADAH, we agreed to make the
9 following statement on the record: Neither ADH's [sic] lack of a
10 formal objection to the exclusivity extension motion nor any
11 findings or conclusions made in connection with the motion will be
12 used by any party in any future litigation regarding the investment
13 agreement or any alleged act, omission or event in connection
14 therewith including without limitation ADH's prior notices of
15 termination. We agreed to make that statement on the record and
16 have now done so.

17 THE COURT: Okay.

18 MR. BUTLER: Your Honor, with respect to the exclusivity
19 motion, the relief we had asked for is that, similarly, to the
20 other procedural motions here that the Court extend the deadline
21 until -- to file a plan or modification -- to file a plan of
22 reorganization until thirty days after substantial consummation of
23 the Plan or any modifications to the plan that's already been
24 confirmed and then also extend the solicitation deadline by a
25 corresponding ninety days.

1 No one filed an objection to that. In connection with
2 the statutory committees, both of the committees as to the official
3 committees believe that it was appropriate to have a specific
4 deadline and a reservation of rights to consider these matters and
5 we agreed with them and so as to the committees the date by which
6 exclusivity would be extended as to the two statutory committees
7 would be August 31, 2008 and the solicitation deadline would be
8 extended to October 31, 2008. The extension as between the debtors
9 and the statutory committees remain subject to motions to shorten
10 or lengthen that period for cause and as to the statutory
11 committees and the debtors, they have agreed between themselves to
12 reserve their rights to address if any of the exclusive periods
13 actually were to expire whether a Section 1129(c) would then be
14 operative in connection with controlling who might be able to file
15 and solicit a competing plan of reorganization but we would put
16 that off to another day, seeing as it's an academic discussion at
17 the moment given the agreements between the parties.

18 THE COURT: Okay.

19 MR. BUTLER: So we did revise the order in connection
20 with those agreements and submitted a revised order to Your Honor
21 earlier yesterday afternoon, I believe.

22 THE COURT: Okay. All right. Does anyone want to be
23 heard on this?

24 (No response)

25 THE COURT: All right. I've reviewed the motion and the

1 revised blacklined order and I'll grant the motion. It appears to
2 me the debtors have been acting in good faith. They obviously
3 still have remaining issues in respect of the plan and/or a
4 modification thereof and, consequently, this extension which,
5 again, is consensual on this basis is warranted. So I'll enter
6 that order.

7 MR. BUTLER: Thank you, Your Honor.

8 Your Honor, you also touched briefly on the 4(m) motion.
9 That's actually the next one, Item 5. This is the post-
10 confirmation extension of avoidance action service deadlines motion
11 at docket No. 13361 and, Your Honor, this deals with the debtor's
12 seeking an entry of an order extending the deadline to serve
13 process pursuant to Bankruptcy Rule 7004(a) and Federal Rules of
14 Civil Procedure 4(m) that's made applicable by Bankruptcy Rule
15 7004(a) for avoidance actions filed in connection with the
16 preservation of estate claims procedures order earlier entered by
17 this Court at docket No. 12471.

18 We did give some specific notice in connection with
19 this, Your Honor. We gave notice of the motion to Lenico
20 Engineering Company, Wachovia Bank National Association and the
21 master service list and the 2002 list. The reason that we gave
22 specific notice to Lenico and Wachovia was because those were the
23 only two parties that had been identified under Exhibit 7.24 of the
24 plan as having the avoidance actions preserved under the plan and,
25 therefore, we gave particularized notice to them of the relief

1 sought by the debtors. We have not given notice to the 742 other
2 defendants therein which are under seal and it was not served on
3 those defendants except to the extent those defendants already had
4 placed themselves on either the master service list or the 2002
5 list.

6 There were no objections to the motion. At the moment,
7 Your Honor, prior to Your Honor's order, we believe that it's
8 appropriate to get a further extension. Right now, the extension
9 is through May 31, 2008, that's Your Honor's -- a prior order
10 entered on March 28th at docket No. 13277 and, again, the process
11 that we're looking for here is essentially the same formulation we
12 did in the 365(d)(4) motion and I presume with a similar
13 modification from Your Honor, the idea here is to not have to deal
14 with these complaints so long as we have the plan process that
15 we're moving forward with.

16 THE COURT: Okay. Well, first, I continue to believe
17 that there is good cause for the relief sought here. Except for
18 the notice you did give I don't think any further notice is
19 necessary under the plain terms of 9006 and the cause is obviously
20 that the analysis so far that's represented in the motion is the
21 same as it was when the motion was originally granted which is that
22 these causes of action are being preserved in light of the
23 limitations period, however, it's not presently contemplated that
24 they will be pursued, although obviously the preservation of them
25 means that they may be pursued but given that there's no reason for

1 either the debtors or the potential defendants to start to have to
2 incur any costs in connection with the litigation so cause is shown
3 under Rule 4(m) and 9006.

4 The issue that I addressed earlier on the lease
5 extension motion is slightly different here, I think, because it's
6 conceivable, I guess, that a plan that I would permit someone else
7 to submit might have a different position on avoidance actions and
8 at which point they should be pursued. So the way I phrased it
9 here and you're all free to chime in on this if it doesn't sound
10 right to you is that the deadline or the extension would be until
11 thirty days after the later of substantial consummation of the plan
12 or any modified Chapter 11 plan and December 31, 2008. That seems
13 to me -- that was the date you had in for another matter, it will
14 come up later and it seems far enough off so that that would be
15 sufficient.

16 MR. BUTLER: Thank you, Your Honor.

17 THE COURT: Okay. So I'll grant it on that basis.

18 MR. BUTLER: Your Honor, the next item on the agenda,
19 Item No. 6, is the debtor's second DIP extension motion filed at
20 docket No. 13409.

21 Your Honor, in this motion the debtors have sought
22 authority to supplement the January 5, 2007 DIP order entered at
23 docket No. 6461, the November 16, 2007 DIP extension order at
24 docket No. 10854 and to authorize the debtors to extend the
25 maturity date of the DIP facility to enter into related documents

1 and pay certain related fees and to authorize the debtors to enter
2 into an arrangement or an agreement with General Motors Corporation
3 or an affiliate thereof, all as has been outlined in the motion in
4 a notice of filing of an unredacted chart relating to the motion
5 that was filed at docket No. 13460 and a notice of the filing of
6 the GM agreement relating to the second DIP extension motion that
7 was filed at docket No. 13461.

8 First, Your Honor, I want to deal with the notice that
9 was given under this motion and the timing of it. The debtors
10 filed -- worked on this motion and finalized it with the
11 appropriate parties on the evening of April 15th intending to take
12 advantage of Rule 1004(c)(1)(2) which permits the commencement of
13 final hearing no earlier than fifteen days after service of the
14 motion. The debtors filed and served the motion overnight on April
15 15th, everybody received it that was required to receive it,
16 received actual service on April 16th, that day. We took an
17 appropriate service activity to make sure that occurred. The
18 affidavit of service is in the exhibit binder which I'll go over in
19 a few minutes that evidences that. I do note, Your Honor, that the
20 actual docketing of the motion on the computer in the Court's
21 docket is ten minutes past midnight on that day. So I want you to
22 understand that that's what -- and I want to make sure the record
23 is clear on that fact that it actually docketed here at about 12:10
24 a.m. on the 16th, although that ten minute delay did not effect
25 service in any way or change in any respects the delivery of the

1 motion or service of the motion as contemplated under Rule
2 4001(c)(2).

3 THE COURT: I guess anyone who waited up that long would
4 have waited another ten minutes.

5 MR. BUTLER: Well, Your Honor, we wanted you to be aware
6 of it and for purposes -- because it is clear that the DIP lenders,
7 General Motors and the debtors all expect and anticipate that this
8 is a final hearing and we wanted to make sure that we had given the
9 Court the proper information relating to all this and that the
10 service to make sure that the exhibits we'll introduce in a few
11 minutes into evidence, that the service was made overnight on the
12 15th and was received by everybody on the 16th.

13 THE COURT: Okay.

14 MR. BUTLER: The second item, Your Honor, that I wanted
15 to describe with you is the forms of the agreement. Maybe it's
16 best to look at the exhibit books now and I've got a couple of
17 items to go through with Your Honor. But we do have exhibits for
18 this particular matter. There are fifteen of them: Item No. 1 is
19 John Sheehan's declaration in support of this. We have actually
20 one reserved exhibit which is Exhibit 2 which is not being used for
21 the hearing. Exhibits 3, 4 and 5 are the form of proposed credit
22 agreement and we are using, after reviewing this with the parties,
23 an amended and restated revolving credit term loan and guaranty
24 agreement. I think, importantly, Exhibit No. 4 is the blackline of
25 the amended and restated revolving credit term loan and guaranty

1 agreement against a prior agreement. Exhibit 5 is the fourth
2 amendment fee letter that has been shared with the committees and
3 with Your Honor. It is marked "Highly Confidential" but it is
4 Exhibit 5. Exhibit 6 is the expedited motion. Exhibit 7 is the
5 form of proposed order and I in fact have some comments to make
6 about that in a few minutes because we've reached agreements with
7 various parties this morning that would require some further
8 alterations to that order such that we would proceed on an
9 uncontested basis with the relief being sought today. So I'll come
10 back to Exhibit 7 in a few minutes. Exhibits 8 and 9 are the
11 notices of filing that I spoke about earlier and Exhibits 10 and 11
12 are the prior DIP orders. Exhibit 12 is a blackline of the
13 proposed order -- the form of proposed order. Then the GM
14 agreements, the GM settlement agreements, the GSA and the MRA are
15 Exhibits 13 and 14 and then the affidavit of service I spoke about
16 earlier is Exhibit 15.

17 With respect to the documents and in light of the fact
18 that there are no objections that I'm aware of at least to this
19 matter, there are some changes to the proposed form of order that I
20 wanted to go over with the Court and there's at least one or two
21 changes -- one change to the proposed form of credit agreement.

22 Let me deal with, first, Exhibit 3 which is the proposed
23 form of credit agreement. At Page 61 and making reference to
24 Article 4.01(a)(iv), the phrase at the end of that condition to the
25 effectiveness which would have previously required that the order

1 Your Honor would consider entering today have become final and non-
2 appealable, the phrase, "and such order shall have become final and
3 non-appealable" has been deleted so that there can be a closing in
4 less than the ten day period. Similarly -- and that's the only
5 change to Exhibit 3. Similarly, a similar change to Exhibit 7 and
6 I have a mark-up, Your Honor, which we'll submit to the Court, I'm
7 not going to read all this into the record, but there are changes
8 to Paragraphs 9 and 12 of the proposed form of order that simply
9 extend parallel 364(e) protection to General Motors with respect to
10 its agreement, again, so that they have the parallel protection
11 that the DIP lenders already had under Paragraph 9 and they're just
12 conforming changes to do that. There's nothing more material than
13 that.

14 In addition, Your Honor, with respect to the order we
15 have a replacement -- a substitute for Paragraph 8 of the order.
16 Paragraph 8 is language that has been worked out with a number of
17 the parties but including with ADAH on behalf of the plan investors
18 and I'll simply read it as it's been revised. It states as
19 follows: "Paragraph 5(b) of the DIP order is hereby amended by
20 adding the following proviso to the end of such paragraph:
21 `Provided further, notwithstanding anything herein to the contrary,
22 this order shall not modify the August 2, 2007 order authorizing
23 and approving Delphi Appaloosa equity purchase and commitment
24 agreement pursuant to Section 11 U.S.C. 105(a), 363(b), 503(b) and
25 507(a), docket No. 8856, the December 10, 2007 order under 11

1 U.S.C. 105(a), 363(b), 503(b) and 507(a) authorizing and approving
2 Delphi Appaloosa equity purchase and commitment agreement amendment
3 (the `EPCA Amendment Order), the Amended Investment Agreements as
4 defined in the EPCA Amendment Order or any rights of the parties
5 under any of the foregoing including without limitation with
6 respect to (i) the propriety allowance or payment of any unpaid
7 transaction expenses or post-order transaction expenses of the
8 timing thereof or (ii) the Delphi/GM agreement, as to which the
9 rights of all parties are hereby expressly reserved." That is a
10 reservation of rights agreement that has been worked out that would
11 be included and that would be the substitute Paragraph 8 of the
12 proposed DIP order.

13 THE COURT: Let me make sure. The Delphi/GM agreement
14 that's referred to in that language is the same as later defined as
15 the Delphi/GM agreement in Paragraph 12?

16 MR. BUTLER: Yes. It's the Delphi/GM agreement that's
17 before the Court today.

18 THE COURT: The same one?

19 MR. BUTLER: The same one.

20 THE COURT: Okay.

21 MR. BUTLER: Your Honor, as to the Delphi/GM agreement
22 that's before the Court there were some modifications to the GM
23 agreement since it was --

24 THE COURT: I'm sorry, before you get to that -- so, I
25 took this from my review but the carve out, then isn't changed as

1 the motion had suggested it might be.

2 MR. BUTLER: Correct, Your Honor.

3 THE COURT: Subsequent negotiations have left the carve
4 out under the original or the current DIP order -- the same subject
5 to this reservation that you just read?

6 MR. BUTLER: Correct, Your Honor.

7 THE COURT: Okay. Which means that if, for example, the
8 transaction expenses are carved out it will be because of some
9 litigation over whether they're owing?

10 MR. BUTLER: Correct.

11 THE COURT: Okay.

12 MR. BUTLER: Now, Your Honor, just with one reference to
13 the Delphi/GM agreement, there were some changes to that since the
14 notice of filing on April 24th. Those blackline changes are
15 referenced and are included in the exhibit binder at Tab 9.

16 I believe, Your Honor, those were all of the changes
17 that have been agreed to and are summarized and with that I would
18 like to --

19 THE COURT: Could I get the -- Exhibit 9, this is what I
20 was given earlier; right?

21 MR. BUTLER: Yes.

22 THE COURT: There's nothing new in that?

23 MR. BUTLER: No. There was a blue sheet at the end and
24 there was blacklined pages behind -- there were just a couple of
25 blacklines.

1 THE COURT: Well, let me just -

2 MR. BUTLER: Exhibit 9.

3 THE COURT: -- make sure that's the one I looked at.

4 (Pause in proceedings)

5 MR. BUTLER: I can pass up the blackline, Your Honor.

6 THE COURT: No, I'm just taking a quick look at it.

7 (Pause in proceedings)

8 THE COURT: Okay. Not major changes by any means.

9 MR. BUTLER: No, Your Honor.

10 Your Honor, with that in mind I'd like to move admission
11 of Exhibits 1 through 15, excepting obviously Exhibit 2 which was
12 reserved.

13 (Debtor's Exhibit Nos. 1 and 3 through 15, Received)

14 THE COURT: Okay. I'll admit them. Does anyone want to
15 cross-examine Mr. Sheehan on his declaration?

16 (No response)

17 THE COURT: Okay. Very well.

18 MR. BUTLER: Your Honor, in terms of presentation, I
19 think that Mr. Sheehan's declaration and the papers we filed, I
20 think, outline all the relevant issues that the debtors would
21 present in their direct case in support of this. Obviously, there
22 are just two points I think I'd like to make in summary; one of
23 them is that we certainly appreciate the support of the lending
24 community in moving forward with respect to the extension of the
25 DIP through December 31, 2008 which was the maturity date the

1 debtors sought. The parties are moving forward, we are obviously
2 in syndication now, the final commitment letters are due at the end
3 of this week, we expect to close shortly thereafter, some time
4 during the next ten days on this if Your Honor approves it today
5 and we have moved forward in connection with the syndication terms
6 that we've indicated on the notice of filing that we made earlier.
7 Second, I simply also would express the company's appreciation to
8 General Motors in stepping up and addressing through the GM
9 agreement the \$600 million or so amount of advances that the
10 debtors have advanced in connection with the GSA and the MRA over
11 the last period of time since we entered into those agreements.
12 Those advances by Delphi will ultimately be settled out when the
13 GSA and the MRA become effective and the agreement by GM here
14 simply addresses GM's support of the company in connection with and
15 addresses, really, with respect to the advances that the debtors
16 have made and we're very appreciative of that as well.

17 Your Honor, I think from a business judgment perspective
18 -- and Mr. Sheehan has testified to it in his declaration --
19 clearly, extending the current DIP facility and continuing to
20 provide adequate liquidity to Delphi's operations on a global basis
21 is extremely relevant and important as we move forward to explore
22 with our stakeholders appropriate modifications to the plan if any
23 and move forward to emerge from Chapter 11 as soon as practicable.

24 THE COURT: Well, that's clearly the case.

25 I had a couple of questions that really don't go to that

1 issue but that's an obvious one.

2 I guess my first question is if syndication is expected
3 to be completed shortly why not wait until then? I mean why do it
4 now?

5 MR. BUTLER: You mean as opposed to Friday, Your Honor?

6 THE COURT: Yes. I mean are you confident enough that
7 you will have the commitments?

8 MR. BUTLER: Your Honor, I believe that we expect that
9 we will have a fully syndicated DIP. JPM has received a number of
10 very substantial commitments already moving forward in connection
11 with this. Obviously, from the company's perspective it was
12 extremely, we thought, relevant and important following the
13 commencement but not the completion of a plan closing date and
14 effective date back on April 4th to move promptly this month with
15 the relaunch of a DIP 10 [sic] or extension and to come in and get
16 authority for that. You can imagine that our stakeholders as well
17 as customers and suppliers want to be comfortable that the company
18 is going to have continued access to appropriate liquidity --

19 THE COURT: Well, what I really wanted to hear is that
20 already have sufficient assurance from the lead that there are
21 major commitments in hand and it's expected to be completed.

22 MR. BUTLER: Yes, Your Honor, I think that is a fair
23 characterization.

24 THE COURT: Okay. Then, I guess my -- the remaining
25 questions I had are a subset of that which is what you asked me to

1 approve is a DIP that's in substantial conformity with the
2 documents and the documents are very far along but there were three
3 places I just had questions: (1) I think may just be a typo
4 because the actual amounts are set forth later in the tranche
5 commitments but in the introductory statement it seems to me when
6 it talks about the amount it just has a bullet point and you may
7 want to deal with that because I don't want to approve something
8 where I'm approving just a bullet point because I think that
9 substantial conformity with a bullet point wouldn't count.

10 MR. BUTLER: Right. No, Your Honor, I think as we've
11 indicated that the facilities --

12 THE COURT: They're defined later and they're all clear.

13 MR. BUTLER: -- are laid out. So we will do that, Your
14 Honor.

15 THE COURT: Okay. So that the bullet point will be
16 consistent with those amounts and then the definition of "available
17 liquidity" has a dollar sign in brackets and in terms of what
18 substantial conformity means, I guess it's within a close range to
19 that dollar sign. That's not like a bullet point either is it?

20 MR. BUTLER: No, it's not, Your Honor.

21 THE COURT: Okay. Then, finally, the EBITDAR covenant,
22 6.04.

23 MR. BUTLER: Yes.

24 THE COURT: The amount seemed to have been raised
25 substantially. Is that a covenant that the debtors believe they

1 could comfortably live with?

2 MR. BUTLER: Yes, Your Honor. As Mr. Shintai testified
3 in the declaration, this represents a negotiation that followed the
4 preparation of a DIP extension case which was modified from the
5 debtor's previous business plan and I think Mr. Sheehan is here and
6 can answer any questions about that.

7 THE COURT: Okay.

8 MR. BUTLER: But the debtors are comfortable with the
9 schedule of EBITDAR that is set forth on Page 7 -- on Section 6104.

10 THE COURT: So this reflects a substantial increase in
11 the debtor's EBITDAR.

12 MR. BUTLER: From prior covenants, Your Honor.

13 THE COURT: From prior covenants.

14 MR. BUTLER: Yes, because the companies -- I mean that's
15 a result of the fact that the transformation plan continues to move
16 forward and the company's operations continue to move forward.

17 THE COURT: Okay.

18 MR. BUTLER: So that the EBITDAR that we're generating
19 now that would be the subject of this covenant is improved from the
20 beginning of the case.

21 THE COURT: Yes? That's right, Mr. Sheehan?

22 MR. SHEEHAN: Yes.

23 THE COURT: Okay. Then on the GM agreement, again, this
24 is really just in terms of my wanting to make sure I understand
25 what the parties are agreeing to here.

1 There's a good faith covenant of both borrower and GM to
2 negotiate and enter into amendments to each of the global
3 settlement agreement and the master restructuring agreement as soon
4 as reasonably practicable?

5 MR. BUTLER: Yes.

6 THE COURT: That's tracked elsewhere in the relief. It
7 doesn't say what those amendments are supposed to be. Is there
8 some implicit understanding of what they are or is it really just
9 to negotiate in good faith?

10 MR. BUTLER: It's to negotiate in good faith, Your
11 Honor. I think, candidly, what the company is exploring with its
12 statutory committees and with General Motors and other stakeholders
13 are the circumstances under which it would be appropriate to
14 accelerate the effectiveness of the GSA and the MRA.

15 THE COURT: Okay.

16 MR. BUTLER: And how and what the circumstances of those
17 are is a matter under discussion between the parties and is a part
18 of the negotiation and we've all agreed to negotiate in good faith
19 on that subject.

20 THE COURT: Okay. But this isn't sort of code words
21 for, you know, some sort of agreement in principal that the parties
22 have that I would be asked to approve now?

23 MR. BUTLER: No, Your Honor, absolutely not.

24 THE COURT: Okay. Then, last, in a couple of places
25 here there's a provision that first appears in "conditions to

1 lending" that's headed "Modifications to Existing Confirmed Plan."

2 MR. BUTLER: U-hum.

3 THE COURT: As I look through this that provision which
4 sort of spells out what can and cannot be done to the confirmed
5 plan is not an event of default. Am I right about that? It just
6 pertains to conditions to lending?

7 MR. BUTLER: Absolutely correct, Your Honor.

8 THE COURT: Okay. So GM and the debtors wouldn't have
9 that trigger over other parties.

10 MR. BUTLER: Correct, Your Honor.

11 THE COURT: Okay.

12 MR. BUTLER: The other piece of this obviously, Your
13 Honor, is in connection with the support -- from the debtor's
14 perspective the support GM is providing here is related to the
15 advances that the company has made under the GSA and the MRA
16 whereas is clear from the agreement, we are negotiating the
17 circumstances under which the GSA and the MRA should become
18 effective and I think GM reasonably requested from the company
19 assurances that if we decided to take a very different path than
20 General Motors and essentially from their perspective go hostile,
21 they want to be able to say, I probably shouldn't provide any more
22 support under this agreement.

23 THE COURT: Right. No, I understand that. I just
24 wanted to make sure it didn't go beyond that and create an event of
25 default.

1 MR. BUTLER: No.

2 THE COURT: Okay. Does anyone have anything further to
3 say on this motion?

4 MR. ROSENBERG: Only, Your Honor, that that last point
5 that you have been making was very hotly contested and we are
6 satisfied that it's now properly drafted to what it should be.

7 THE COURT: Okay. All right. Well, therefore, based on
8 the record and the fact that this motion is now obviously
9 uncontested, I'll approve it.

10 MR. BUTLER: Thank you, Your Honor. We'll be submitting
11 a revised order to Your Honor later today.

12 THE COURT: Okay.

13 MR. BUTLER: Thank you.

14 Your Honor, the next matter on the agenda is the
15 Kettering Sale motion at docket No. 13028. We're here to seek
16 approval for the sale of certain assets of Delphi Automotive
17 Systems, LLC that consist of machinery, equipment and inventory
18 primarily used and located at DAS, LLC's Damper manufacturing
19 facility in Kettering, Ohio to Tenneco Automotive Operating
20 Company, Inc., the stalking horse bidder. This was a stalking
21 horse that was approved under a bidding procedures order that Your
22 Honor considered at a prior hearing on March 20th and entered at
23 docket No. 13188.

24 Your Honor, there was a bid deadline established of
25 April 10, 2008 with respect to this proposed sale. The debtors did

1 not receive any additional bids, therefore, no auction was held and
2 we are here today to seek approval of the sale of the Kettering
3 assets for approximately \$18.8 million and other consideration as
4 that price may be adjusted based on the inventory value, that is
5 the purchase price as well as entering into a lease agreement for a
6 portion of the Kettering facility in connection with the sale as we
7 have described previously and as the papers before the Court
8 indicate.

9 The form of the lease is attached to the sale agreement
10 as Exhibit A. As I've indicated to Your Honor at the original
11 hearing, this is not a sale of a business, it's rather a sale of
12 assets. The result of that is that there are no pre-petition
13 executory contracts that are assumed or assigned as part of this
14 particular transaction, although we are considering whether some
15 post-petition supply agreements might ultimately be assigned. That
16 is not a part of today's hearing.

17 THE COURT: Okay.

18 MR. BUTLER: Your Honor, we have made a few changes to
19 the proposed sale order, we filed and served a notice of these
20 changes along with a redline on April 28th at docket No. 13473. We
21 also with Tenneco's help found a scribner's error in Paragraph 19
22 of the order. We reflected that in the version of the order we
23 sent to chambers last evening and are set forth in the trial
24 exhibits which I'll describe in a moment.

25 The four specific changes that were made included at

1 Paragraph I, we added a provision to explicitly find that the sale
2 order and the consummation of the transactions were supported by
3 good business reasons and served the best interests of the estate.
4 At Paragraph 6 of the order we added language so that it now states
5 it will be binding not only on the seller but the reorganized
6 debtors after the effective date of the plan surviving discharge
7 claims under the plan. At Paragraph 7 it was made explicit that
8 any modification of the agreement, any related documents needed to
9 be in writing signed by the parties and in accordance with the
10 terms of the agreement and at Paragraph 19 it is now noted that the
11 transactions contemplated by the agreement are undertaken at arm's
12 length and without collusion.

13 In terms of the exhibits that we have in support of
14 this, there are thirteen of them, they include a declaration from
15 Mr. Sheehan at Exhibit 1, Exhibits 2 and 3 are the form of sale and
16 purchase agreement and the form of lease agreement. Exhibits 4
17 through 7 are various of the proposed court documents. Exhibits 8
18 through 12 are all the notices and affidavit of publications and,
19 importantly, at Exhibit 13 made available to the Court and marked
20 "Highly Confidential," is a memorandum of understanding regarding
21 the transfer of the Kettering operations and the effect upon
22 employees which is a memorandum of understanding that has been
23 worked out with the IUECWA.

24 THE COURT: So that resolved their potential objections.

25 MR. BUTLER: That resolved their potential objection on

1 the issues and that effects MOU is confidential but has resolved
2 those issues.

3 THE COURT: Okay.

4 MR. BUTLER: So, Your Honor, I'd like to move admission
5 of Exhibits 1 through 13 into the record.

6 THE COURT: Okay. Does anyone want to cross-examine Mr.
7 Sheehan on his affidavit?

8 (No response)

9 (Debtor's Exhibit Nos. 1 through 13, Received)

10 THE COURT: All right. I'll admit those exhibits into
11 the record -- into evidence.

12 MR. BUTLER: Thank you, Your Honor.

13 Your Honor, in light of that on the record here we'd ask
14 that the Court approve the sale of the Kettering assets to Tenneco
15 under the terms provided for in the sale and purchase agreement and
16 find that Tenneco is a good faith purchaser under 363(m) of the
17 Bankruptcy Code and for consideration to be provided by Tenneco for
18 the acquired assets is fair and reasonable and the sale may not be
19 avoided under Section 363(m) of the Bankruptcy Code.

20 THE COURT: Okay. I can make all those findings based
21 on the record before me.

22 MR. BUTLER: Thank you, Your Honor.

23 THE COURT: Okay. So does anyone have any -- there are
24 no objections to this so no one is going to say anything on it.

25 MR. BUTLER: No, Your Honor.

1 THE COURT: I'll approve the motion, again, as being
2 unopposed and based upon my findings as set forth in the proposed
3 order which I'm perfectly comfortable with.

4 MR. BUTLER: Thank you, Your Honor.

5 Might I have just one moment?

6 THE COURT: I think the sale agreement is supposed to be
7 an exhibit to the order and I'm not sure that we have that so you
8 probably ought to e-mail that to us.

9 MR. BUTLER: We'll submit that.

10 MALE VOICE: Thank you, Your Honor.

11 MR. BUTLER: Your Honor, we have two contested matters
12 on today's docket, they're both claims objections and we're only
13 proceeding on the uncontested portions of them at this hearing.

14 Item No. 8 is the Twenty-Eighth omnibus objection at
15 docket No. 13269. There were nine proofs of claim addressed on the
16 objection that the debtors filed. The debtors received two
17 docketed responses involving five proofs of claim and as a result
18 today we're proceeding for relief only with respect to the
19 uncontested portion of the Twenty-Eighth omnibus claims objection.
20 It covers four claims asserting liquidated claims of approximately
21 \$1.1 million and we're seeking to expunge all four of those claims.

22 We have, Your Honor, continued our practice of providing
23 particularized notice of the objection and if Your Honor grants the
24 relief as to the uncontested claimants we'll provide particularized
25 notice of the relief obtained today.

1 As to the five claims, proofs of claim as to which
2 responses were filed, creating a contested matter, we'll put those
3 over on to the claims track in connection with the claims
4 procedures order.

5 THE COURT: Okay. I'll grant the unopposed relief
6 sought based on due notice, no opposition and the averments in the
7 objection.

8 MR. BUTLER: Thank you, Your Honor.

9 Your Honor, Item 9 on the agenda is the debtor's Twenty-
10 Ninth omnibus claims objection. This particular objection involves
11 the debtor's seeking expungement or modification of certain claims
12 because those claims were satisfied in whole or in part by cure
13 payments made by the debtors filing the assumption and assignment
14 under Section 365 of the Bankruptcy Code of executory contracts or
15 unexpired leases pursuant to the sale of the debtor's interiors and
16 closures business. This relief is necessary to eliminate multiple
17 recoveries for a single liability to insure that a claim holder
18 will not realize recovery on account of a default that has already
19 been satisfied through a cure payment.

20 This objection dealt with seventeen proofs of claim. In
21 connection with the seventeen proofs of claim we received two
22 responses covering two proofs of claim in the amount of \$408,000.00
23 and we'll adjourn those to the claims track in connection with the
24 claims procedures order. Of the remaining fifteen claims, they
25 asserted liquidated damages of approximately \$10.9 million; twelve

1 of those claims had been modified on prior orders so pursuant to
2 other orders of the Court the aggregate amount of these claims
3 actually -- the face amount is \$10.9 million, they've already been
4 reduced to \$7.8 million.

5 With respect to these fifteen claims the debtors seek to
6 expunge three of the claims with an assertive aggregate amount of
7 about \$1.5 million and with respect to the twelve claims we would
8 seek to reduce the amounts owing under those claims to an aggregate
9 of approximately \$5 million and that is a reduction of just about
10 \$3 million from the reduced amount based on the prior orders of the
11 Court.

12 So, again, Your Honor, here we have given particularized
13 notice of this objection to the claim holders involved. With
14 respect to the two responses, those go the claims track. With
15 respect to the fifteen remaining claims, we're asking for relief
16 today to have three of them expunged and twelve of them modified as
17 I've indicated on the record.

18 THE COURT: Okay. Again, based on due notice and lack
19 of an objection and the statements made in the objection by the
20 debtors I will grant the unopposed claim objections sought today.

21 MR. BUTLER: Thank you, Your Honor.

22 Your Honor, finally, Item 10 on the agenda is an
23 adversary proceeding involving the debtor's complaint to recover
24 property of the estate, adversary proceeding No. 08-01038, and we
25 have been dealing with the initial scheduling conference and this

1 involves a FICA refund complaint between the company and the
2 Internal Revenue Service.

3 The IRS has continued to request additional time from
4 the debtors to prepare its answer and we are cooperating with that
5 request and, therefore, Your Honor, we would ask that you adjourn
6 the initial scheduling conference until the May omnibus.

7 THE COURT: Okay. I'll do that.

8 MR. BUTLER: Thank you, Your Honor.

9 Your Honor, that represents the matters that were
10 scheduled for a hearing at this Thirtieth omnibus hearing.

11 THE COURT: Okay. Very well.

12 MR. BUTLER: Thank you, Your Honor.

C E R T I F I C A T I O N

I certify that the foregoing is a transcript from an
electronic sound recording of the proceedings in the
above-entitled matter taken on April 30, 2008, except
where, as indicated, the Court has modified the transcript.

Carla Nutter [®]

Carla Nutter

5/2/08

Date